Mohamad Salleh bin Shaik Ahmed, Talib bin Sheik Ahmed, Zakiah binti Sheik Ahmed and Abdul Haddy bin Abdul Rahman are trustees under a trust deed. The appellant, Mohamad Salleh bin Shaik Ahmed, is one of the beneficiaries of the trust properties. Sometime in July, 1969 the trustees charged one of the trust properties, to wit a parcel of land described as Parcel 62, Section 26, Kuching Town Land District to the respondent, Lau Siok Kee (f) to secure a loan of $30,000. In January, 1971 when the balance of the said loan was not paid on due date the respondent/chargee applied by originating summons for an order to sell the charged land. The court ordered sale by public auction.

In February, 1972, the appellant issued a general writ of summons citing the respondent/chargee and the trustees as defendants. As against the trustees he asked for a declaration that they have no right or power under the trust deed to charge the land and that the charge as executed by them and registered in the land office is null and void. Alternatively, as against the respondent/chargee he sought a declaration that her claim arising from the loan transaction between her and the trustees is unenforceable under the Sarawak Moneylender's Ordinance. He asked for the order of sale to be set aside. Following the issue of the writ he applied for an order to stay the auction sale. This was granted on usual terms as regards damage.

The respondent/chargee by notice of motion dated March 6, 1972 applied for an order to strike out the appellant's statement of claim and to dismiss the action under Order 25 or under the inherent power of the court. The second defendants, the trustees, were apparently, not parties to the application. One of the grounds for the application is that the respondent/chargee has no notice of the trust constructive or otherwise. She maintains that the charge was good and effective and that she has acquired an indefeasible interest in the land which under the Land Code cannot be defeated except for fraud. This can be set up as a defence to the action. But we do not think it can be made a ground for dismissing the action at this stage of the proceedings. So we pass on to another ground which is that the appellant's claim is frivolous and vexatious.

In the affidavit filed on behalf of the respondent/chargee it is stated, *inter alia*, that the appellant not being a party to the loan transaction and to the originating summons has no *locus standi* or has no right of action and cannot, therefore, plead the Moneylender's Ordinance to invalidate the transaction or proceedings between the respondent/chargee and the trustees. The appellant is undoubtedly a beneficiary of the trust properties and, therefore, has an interest in them. In certain circumstances he may have a right to intervene in any proceedings between the trustees and a third party in order to protect his interest. That is to say he may apply to the court for an order to intervene. Even if he has not done so he may by action ask for a declaration that the trustees have misused their powers and, therefore, seek to be compensated by them for the loss of his interest. He has not done any of these things. His action was aimed solely at invalidating the loan transaction on two grounds, namely, the trustees have no power to charge the trust property, or, alternatively that the respondent/chargee's claim against the trustees is unenforceable under the Moneylender's Ordinance.

On the question whether or not the trustees have power to charge the trust property, this is no longer in doubt for there is such power under the Trust Deed. As we understand Mr. Thomas, counsel for the appellant, he was no longer relying on this ground.

As for the alternative ground it is clear that in the circumstances of this case the appellant has no *locus stundi* or no right to plead the Moneylender's Ordinance inasmuch as he was not a party to the loan transaction or to the Originating Summons. He is a complete stranger. In that context his action was plainly vexatious and frivolous.

The order of sale of the High Court obtained by the respondent/chargee is a final order. The trustees could appeal to the Federal Court of Appeal to have it set aside if they so wished. We do not think they can go back to the High Court to get it set aside simply because they have since discovered that the chargee's claim is unenforceable under the Moneylender's Ordinance. For the same reason we do not think the appellant who is a complete stranger can be permitted to do what the trustees cannot do.

Order accordingly.

Solicitors: *Thomas & Co; Ee, Lim, Tai & Leong.*

MAHMOOD v. GOVERNMENT OF MALAYSIA & ANOR.

[O.C.J. (Yong J.) December 20, 1973]

[Kuala Lumpur — Civil Suit No. 12 of 1969]

Tort — Negligent shooting — Police officer shooting at person running away from scene of suspected offence — Justification — Reasonable suspicion — Powers of police in effecting arrest — Criminal Procedure Code, (F.M.S. Cap. 6), ss. 15 and 23(1).

In this case the plaintiff alleged that he was unlawfully and negligently shot at and wounded by a police officer while he was at the Lake Gardens. The defence was that when the police officer fired the shots he was lawfully discharging his police duties to prevent the plaintiff from escaping from the scene where an offence was reasonably suspected to have been committed.

Held: (1) on the evidence the plaintiff had failed to prove his allegations that he had been shot by the police officer negligently and without warning;

(2) in the circumstances the police officer was not negligent and was justified as a last resort to fire the shot to effect the plaintiff's arrest and prevent him from escaping.

Cases referred to:-

(1) *Queen* v. *Prutab Chowkeedar*, Sutherland Weekly Reporter vol. 2 p. 9.

(2) *Mahadeo Ria & Ors.* v. *Emperor* A.I.R. 1924 All 201.

(3) *Romesh Chandra* v. *Emperor* A.I.R. 1914 Cal. 456.

CIVIL SUIT.

Edmond Lxo for the plaintiff.

Abdul Razak bin Dato Abu Samah (Senior Federal Counsel) for the defendants.

Yong J.: In this suit the plaintiff claimed damages for physical injuries suffered by him as a result of a gunshot wound caused by the second defendant a police constable in the employ of the Government of Malaysia. In his amended statement of claim the plaintiff alleged that while he was lawfully in the Lake Gardens in the early morning hours of 1 a.m. on January 4, 1968, he heard a commotion and ran away and while running away the police without any warning unlawfully and negligently shot and wounded him. The defence was that the second defendant while on police duties in the Lake Gardens heard a woman screaming for help. He and another constable rushed towards her direction. He saw the plaintiff and another Malay running away from the scene. He gave chase and shouted to them to stop. They ignored his warnings and continued to run away. He fired a warning shot. As they still continued to run away a second shot was fired. It hit the plaintiff and brought him to a halt. The defence contended that when the second defendant fired those shots he was lawfully discharging his police duties to prevent the plaintiff from escaping.

The question before the court is whether the second defendant was justified or negligent in firing the second shot injuring the plaintiff under the circumstances of this case.

The facts showing the circumstances under which the plaintiff was shot may be briefly described as follows.

The plaintiff and his three friends, Sulaiman, Moktar and Aziz after spending three hours in drinking and dancing left the Bukit Bintang Joget Hall in the early morning hours of January 4, 1968. From there they went to Jalan Tuanku Abdul Rahman, where they met two young ladies near the Mara Building. "I offered them a lift home in our car" said the plaintiff. They accepted the invitation and were conveyed not to their homes but to a restaurant in Jalan Brickfields, and after food they were taken to the Lake Gardens. Moktar who was the driver, stopped the car near the vicinity of the Lake Club Buildings and its car park.

In the car were four men and two girls. They decided to split up into two groups so that two men could be with one girl. Sulaiman and plaintiff got out of the car with one girl, and the others remained in the car. Sulaiman took the girl to a bush and the plaintiff followed them. The bush was about 50 yards away from the car. When they were inside or near the bush, plaintiff, according to his story, was requested by Sulaiman to go away and he then walked back to the car. While he was talking to Moktar and Aziz in the car, he heard screams coming from the bush. The girl in the bush was screaming for help. The girl in the car got out and went to the assistance of the girl in the bush. Plaintiff followed the girl and went towards the direction of the bush. On reaching the bush he saw Sulaiman and the girl on the ground. He asked Sulaiman to go home, and his suggestion was ignored. Then he heard people speaking and saw them coming towards them. They were about 50 yards away and were shining their torch lights towards his direction. He became frightened and told Sulaiman to run away and they both ran away leaving the girl behind.

When he was cross-examined why he had followed Sulaiman and the girl into the bush, plaintiff reluctantly replied:—

"Now I admit that I went with Sulaiman into the bush in order to have sexual intercourse with the girl but not against her will. There was no arrangement to pay the girl. No arrangement for payment was ever made with the girls. If the girl had not screamed for help but had given her consent I would have taken my turn to have sexual intercourse with her. But I did not have my turn yet. I was waiting. I do not know whether the girl was a good or a bad girl. She did not at any time throughout the evening ask for money."

When asked why he had run away towards the direction of darkness instead of running back to his car where his friends were, or to the Lake Club premises where it was brilliantly lighted up, plaintiff replied:—

"I thought Sulaiman had raped the girl. Since he has committed a criminal offence I did not want to get myself involved in his offence. With that in mind I thought the best thing for me was to run away. I ran away for the purpose of escaping from every body. I was frightened at that time. I did not want to be arrested or detained by the police. I was trying to escape regardless whether from the police or anyone else."

He went on further::—

"So I ran away by sliding down the slopes of the hill. I heard a shot being fired. I did not hear anyone asking me to stop running away. After hearing the first shot I continued to run to escape. I did not care whether the man who fired that shot was or was not a policeman as I wanted to escape. That shot was fired from behind me. I do not know how far behind me that man was when he fired that shot. That shot did not deter me from running away. The man who had fired that shot could be the policeman or anyone else. What was in my mind at that time was to escape and to run away. If there was a shout asking me to stop running away, I would still run away, because my intention was to run away and escape from being arrested."

Re-examination of plaintiff by his counsel threw even more light to disprove plaintiff's allegations contained in his statement of claim in which he alleged that he ran away because he had heard a commotion. His replies under re-examination belied his allegations. They showed that he ran away for fear of being arrested by the police. He had thought that his partner in pleasure, Sulaiman, had raped the woman and he did not wish to be arrested together with him. So he ran away. This is what he said under re-examination:—

"When I was being cross-examined by Razak I did say that Sulaiman might have committed a criminal offence. I did not see the actual rape being committed but I thought a criminal offence could have been committed because the girl cried and screamed for help.

When the girl screamed I knew something bad had happened. I did not know whether rape had actually taken place or not. I was afraid I would be involved in the matter. Sulaiman might have raped the girl. From the time when I heard voices coming towards us, and saw torch lights shining on us, I immediately ran away. I have no time to think whether the people coming were policemen or not. I could not say whether the beams of light had or had not been shone at us. I went to the Lake Gardens but I have no prior intention to have sexual intercourse with either of the girls. We picked up the two girls at Mara Building in Jalan Tuanku Abdul Rahman. Mara Building has many offices where girls worked. When we picked up these two girls at Mara Building we did not plan to have sexual intercourse with them. Neither have we such intention at the restaurant in Brickfields. While in the car there was no discussion about sexual intercourse. I do not know whether Sulaiman had any such plan."

Plaintiff's witness Sulaiman admitted taking the girl out of the car but denied taking her into the bush. He said he took her to a "higher ground" under some trees. Although he was there alone with her for half an hour, he did nothing to her. His hands never touched her. He denied interfering with her breasts or her private part or trying to take her knickers off. He denied raping or molesting her. He could not give any reason why the girl should scream for help, other than saying that she might have screamed on seeing her girl friend and plaintiff coming towards her. He however admitted that when plaintiff came, plaintiff did advise him to go home but denied that he told him not to use force on the girl. At that moment he said he heard footsteps and people coming towards them, shouting "Jangan Lari, Jangan Lari" meaning "Don't run, Don't run." He became frightened and ran away leaving the girl behind. He ran up a hill and then down its slopes towards the direction of Jalan Parliament. While running he heard the sound of a gunshot. He continued to run as fast as he could. After crossing a road he heard another shot. He then stopped running because he felt something had gone wrong. He then saw two persons. Plaintiff was lying on the ground.

Sulaiman was an unmarried young man, physically strong and well built, aged 28 and weighed 160 lbs. For a Malay he was exceptionally tall almost six feet in height. He is a technician employed in the Royal Malaysian Air Force. In this Air Force he carried firearms. He said he could shoot well. He did not appear to me to be a person who could be easily frightened. When he ran away leaving the girl behind he did not run back to his car which according to him was only 30 to 40 yards away and in this car were his two friends Moktar and Aziz, who could help him. When he was asked why he chose to run away into the dark places away from his car and his friends, he could give no satisfactory explanation. This is what he said:—

"I ran away from the car. I did not run towards the car. I agreed that I have two men friends in the car who could help me. I ran away from them. I did not run away in order to escape from being found by the police. I deny I tried to escape from the police. I deny I molested the girl. I deny that when the girl screamed the police came with their torch lights shining. I deny I ran away for fear of being arrested by the police."

When he was questioned by the prosecution through the court, he reluctantly admitted:—

"If one was chased by robbers one would naturally run towards the Lake Gardens buildings and its car park where both places were well lighted up. If one had wanted to escape from the police one would naturally run away to a dark place where the police could not find him."

Sulaiman did not impress me to be a witness of truth. He was evasive in his answers and prevaricating in his replies. The reasons given by him for taking the girl to that lonely spot in the early hours of the morning, his description of his behaviour towards her while they were in the bush or under the trees, his explanation why the girl should scream for help, and his story why he ran away did not appear to me to be true and I do not believe them.

The defence of the second defendant was a simple one. He was at all relevant times a detective constable attached to the Criminal Investigation Section of the Police Headquarters. He was 30 years of age and had been in the Police Force for 10 years.

Just before midnight on January 3, 1968 he received instructions to go to the Lake Gardens. As there were frequent cases of rape, robbery and thefts in the Lake Garden areas he was instructed to carry out patrol duties there. Including him there were five detective constables assigned to carry out such duties. He and Abdul Aziz were in one party and the other three in another. All five were given firearms and torch lights. The beam of second defendant's torch light could reach a distance of 200 yards. While patrolling and laying in ambush near a tree he heard screams. They were screams of a woman in distress calling for help. It was then 2.20 a.m. He and Abdul Aziz rushed towards the direction where the screams came from and shone their torch lights. He saw plaintiff and another Malay running away from the scene. He disclosed his police identity and shouted to them to stop. He shouted to them several times in Malay, asking them to stop and not to run away otherwise he would shoot with his gun. They ignored his warning and continued to run away. After a long chase he then fired a warning shot towards their direction. They continued to run away. He shouted to them again ordering them to stop running away. As they did not stop, he fired a second shot aiming at their legs. The two men were running one after the other. This second shot hit the man running behind the first man, and that man was the plaintiff. That shot brought plaintiff to a stop but the first man escaped and disappeared into the darkness.

When he was cross-examined why he had used his gun second defendant's explanation was as follows:—

"The plaintiff was shot by me. The act of shooting is a dangerous act. I shot at him to prevent him from running away. I aimed at his legs. To prevent him from running away and after I had given him the warnings, it would be necessary to shoot if he continued to ignore my warnings. He was trying to escape by running away into the dark places. I do not know if plaintiff was a dangerous man. I suspected and believed that he had committed rape or robbery or greivious hurt to the woman who had screamed.

As he was running away from the place where the screams came from, I suspected that he had committed the offence of rape, robbery or hurt or stabbing. He might have used a dangerous weapon in assaulting and causing bodily injuries.

The plaintiff ran away from the place where the screams of distress came from. He refused to stop, although I had shouted to him to stop. What else can I do. If plaintiff was innocent he would have stopped when a policeman had asked him to stop. I wanted to arrest him and that was why I chased after him. He kept running away inspite of warnings. After he was shot he fell down on the grass verge. I ran up to him. On seeing him bleeding, I asked a fellow policeman to take him to hospital in his patrol car. As he had fallen down he was as good as being arrested. He was in our custody.

If I had not shot him he would have run away and escaped into the darkness."

The Deputy Superintendent of Police B. D. Henry testified that since November 1967 it was his duty to detail policemen to patrol the Lake Gardens areas. This was due to many armed robberies taking place there. Between November 5, 1967 and December 30, 1967 a period of only 55 days there was a total of nine robberies and thefts. If Jalan Duta area was included the number of robberies and rapes would be considerably more. The victims were usually courting

couples. On the night of January 3, 1968 he detailed Ahmad Rasul (second defendant) and Abdul Aziz and three others to patrol the Lake Gardens areas. They were given firearms and torch lights.

When he was cross-examined on second defendant's duties he said:—

"If the patrol men heard screams of distress from a woman, it is their duty to go to her assistance, and if they see persons running away from the scene they should apprehend them. They are permitted to open fire with their firearms to prevent them escaping from arrest after having given them the necessary warning not to run away. They are entitled to shoot if their warnings were ignored especially if the patrol men suspected that the persons running away had committed rape, robbery or stabbing. If a woman scream for help, I would suspect that she was being raped, robbed, stabbed or murdered.

Before they shoot, they must first give warning to the persons running away and to shout to the fugitives to stop running away or else they would shoot. Those warnings are sufficient. If I heard a woman screaming for help and policeman shouting, asking people not to run, I would remain stationary and not run away.

It is only natural for policeman who heard a woman screaming for help to converge to that direction where screams came from. Because of the frequency of the serious offences being committed, the patrolmen were briefed to apprehend the offenders and take all reasonable steps including use of firearms to prevent the offenders from escaping or running away.

In order to prevent them escaping, one should as far as possible aim to shoot at their legs. Policeman are not selected on marksmanship but on other qualifications."

"The policeman must give warning before shooting. Under our regulations it was not necessary to fire a warning shot before shooting at them."

"The regulations I mentioned are the Departmental Police Regulations."

On the evidence before me I find that the plaintiff has failed to prove his allegations that he had been shot by the second defendant negligently and without warning.

Both counsel have also referred me to certain provisions in the Criminal Procedure Code. Under the Chapter on Arrest, Escape and Re-taking, sections 15 and 23(i)(a) read as follows:—

"15. (i) In making an arrest the police officer or other person making the same shall actually touch or confine the body of the person to be arrested unless there be a submission to the custody by word or action.

(ii) If such person forcibly resist the endeavour to arrest him or attempt to evade the arrest such officer or other person may use all means necessary to effect the arrest.

(iii) Nothing in this section gives a right to cause the death of a person who is not accused of an offence punishable with death or with imprisonment for life."

"23. (i) Any police officer or penghulu may without an order from a magistrate and without a warrant arrest—

(a) any person who has been concerned in any offence committed anywhere in Malaysia which is a seizable offence under any law in force in that part of Malaysia in which it was committed or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having been so concerned;".

Under section 15(ii) it is evident that a police officer is entitled to use all means necessary to effect the arrest of a person attempting to evade arrest. This section is similar to section 46(2) of the Indian Code of Criminal Procedure 1898. D. V. Chitaley* commenting on the meaning of the words *"Use all means necessary to effect the arrest"* has this to say: —

"On the other hand, the person effecting the arrest is justified under sub-section (2) of the section in using so much violence as is necessary to effect his object, with this qualification, namely, that his right does not, except in the two cases mentioned in sub-section (3) extend to causing the death of the person sought to be arrested. Thus, where a chowkeedar seeking to arrest a fugitive thief, seeing no other means of capturing him, wounded him with a spear, it was held that he was justified in doing so. Similarly, a shot fired over the head of a suspect, a dangerous person, in order to effect his arrest, was held to be justified. Where a supposed offender took shelter in his own house and would not come out when called by the police officer desiring to effect his arrest it was held that the latter was justified in firing a shot at the house as last extremity and committed no offence if the shot fired by him killed the offender who could not be seen from the place from which the officer fired."

In the *Chowkeedar*[1] case where Chowkeedar speared and wounded a fugitive thief to prevent him from escaping, Mr. Justice Campbell said: —

"it seems to me that the chowkeedar, seeking to arrest a fugitive thief, and who sees no other means of capturing him, is fully justified in using so much violence as is necessary to effect this object."

Earlier on in his judgment, his Lordship said:—

"I gather from the judgment and the previous proceedings, that the prisoner in good faith took the complainant for a thief (whether he really was so or not, does not appear), whom he, as a chowkeedar, was bound to capture. If there was any mistake regarding the fact of complainant's being a thief, it was a mistake of fact, and not a mistake of law, and prisoner is entitled to the benefit of sections 76 and 79 of the Penal Code."

Mr. Justice Glover concurring said:—

"Now, it is admitted by the judge that the prisoner did not use his spear until he saw no other means of securing the fugitive, for whose escape he, as a chowkeedar, would have been held responsible, and the wounds inflicted do not appear to have been in any way dangerous. Taking all these circumstances into consideration, I think, with Mr. Justice Campbell, that the violence used by the prisoner was justifiable, and that the sentence of one year's rigorous imprisonment passed upon him should be reversed."

Section 23(i)(a) of our Criminal Procedure Code empowers a police officer to arrest without warrant or order from a magistrate, any person who has been concerned in a seizable offence or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists of his having been so concerned.

This section 23(i) is similar to section 54(1) of the Indian Code of Criminal Procedure. D. V. Chitaley† (3) commenting on the meaning of the words *"Reasonable suspicion exists of his having been so concerned"* says: —

"A police officer can arrest a person without warrant where a reasonable suspicion exists of his having been concerned in any cognizable offence. Where a police officer suspecting that certain pieces of cloth which a man was carrying early in the morning were stolen property, went to him and questioned him and having received unsatisfactory answers arrested him, it was held that he was entitled to do so. Where a person was found armed, lurking at midnight in a village inhabited by persons well known to the police as professional dacoits, it was held that there was a reasonable suspicion against the person of his being concerned in a cognizable offence. But this does not mean that the police are limited only by their own discretion as to what persons they may arrest without warrant. Their powers in this respect are, as has been seen in Note 2, strictly defined by the Code.

* A.I.R. Commentaries on the Code of Criminal Procedure 6 ed. (1965), vol. 1, p. 219.

† *ibid*, pp. 230, 231.

In order to act under the first clause, there must be a reasonable complaint or reasonable suspicion of the person to be arrested having been concerned in a cognizable offence. What is a reasonable complaint or suspicion must depend upon the circumstances of each particular case; but it should be at least founded on some definite fact tending to throw suspicion on the person arrested, and not on a mere vague surmise. The words 'reasonable suspicion' have been held to mean a *bona fide* belief on the part of the police officer that an offence has been committed, or is about to be committed. Where there is personal enmity between the police officer concerned and the person arrested, a very high standard of evidence would be required to prove that the police officer acted in good faith."

In *Mahadeo Rai and others* v. *King Emperor*[2] a girl complained to the police that she had been raped by Mahesh and Ram Lal. The Sub-Inspector deputised certain constables to arrest them. When these constables reached the scene, the two persons concerned ran into a house and when the constables attempted to enter the house to effect the arrest, they were stopped by the applicants on the ground that the constables were not armed with a warrant of arrest and were not in their uniforms. Kanhaiya Lal J. held that:—

"even if they were not in uniforms and had no warrant of arrest with them they had sufficient authority under section 54 of the Criminal Procedure Code to arrest Mahesh and Ram Lal on the suspicion of having committed the offence with which the girl was charging them."

In *Romesh Chandra* v. *Emperor*,[3] a constable had been told of certain occurrences on the road and was led to the spot where he found the men had disappeared. He was told by the occupant of a hut that no one was in the hut, but the constable saw a man "spring" from the south hut to the north hut. He followed that man through the open door and found a number of persons sitting together in a room in the dark. The constable was about to look under a Machan to see if anyone was hiding there when one of the men sitting there made a statement to him. He then removed a basket which was under the machan and found a gun. It was contended that the entry into the hut made by the constable was illegal. Beachcroft J. held that in view of these suspicious circumstances the constable had reasonable suspicion that a cognisable offence had been committed, and under section 54 of the Criminal Procedure Code the constable had sufficient authority to effect an arrest and the entry was therefore not illegal.

After examining these and other authorities I come to the conclusion that if there exist sufficient grounds to raise a reasonable suspicion in the minds of a police officer that (i) a seizable offence has been committed and that (ii) the persons seen running away from the scene are concerned in its commission, he may arrest them, and may after disclosing his police identity and after issuing the necessary warnings take all steps including the use of firearms as a last resort, to prevent them from escaping. Should such persons in attempting to escape ignore such warnings and are injured they have themselves to be blamed. A police officer cannot however use more force than is necessary to effect their arrest or capture nor can he cause their death unless the alleged offence is one punishable with death or imprisonment for life. The question whether there existed sufficient grounds to raise such a reasonable suspicion, is a question for the court to decide.

In the present case the following circumstances in my opinion would raise such a suspicion in the minds of a prudent man and even more so in the minds of a police officer who has had knowledge of the frequent occurrences of the offence of rape, robbery, stabbing or assault committed against courting couples in the Lake Gardens and Jalan Duta areas. The circumstances are these:—

(a) A woman was heard crying and screaming for help in the early morning hours of 2.20 a.m. in or near the areas where many robberies and rapes had recently taken place.

(b) So much so that the Security Department of the Police had to detail special constables to patrol these areas.

(c) On hearing such distressing screams in such a place and at such an hour it is quite natural, as the Deputy Superintendent of Police had put it, for any reasonable person to suspect that the woman screaming was being raped, robbed, stabbed or murdered.

(d) Even the plaintiff himself had suspected that the screaming woman was being raped by Sulaiman.

(e) When the police officer ran towards her direction he saw two persons running away from the scene.

(f) They were running away towards the direction of darkness to escape.

(g) Inspite of police warnings asking them not to run they ran away as fast as their legs could carry them, climbing up a hill and scaling down its slopes.

(h) Inspite of the warning shot being fired at them, they continued to run away to escape.

On the evidence before me I am satisfied and find that there existed sufficient grounds to raise a reasonable suspicion in the minds of the second defendant that (i) a seizable offence has been committed and (ii) that the two persons (plaintiff and Sulaiman) seen running away from the scene were concerned in the offence and that under section 23(i)(a) of the Criminal Procedure Code, second defendant was empowered to arrest them and under section 15(ii) he was entitled to use all means necessary to effect their arrest and capture. In the circumstances of this case second defendant was not negligent and was justified as a last resort to fire the second shot to effect the plaintiff's arrest, otherwise he would have escaped and disappeared into the darkness as his companion did.

I find as a fact that the plaintiff knew that the person asking him not to run away was a policeman and that inspite of his repeated warnings he chose to continue to run away to escape. He also knew that if he did not stop running away he would be shot.

The suit is accordingly dismissed with costs. In view of this it is unnecessary for me to decide the question of damages claimed by the plaintiff.

Suit dismissed.

Solicitors: *Tunku Zuhri, Manan & Abdullah.*